



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNR OPR MNDC MNSD FF

### **Introduction:**

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to sections 46 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To cancel a Notice to End Tenancy for unpaid rent;
- f) To recover the filing fee for this application.

### **SERVICE**

Both parties attended the hearing. There was a considerable dispute as to when the Notice to End Tenancy was served (May 9<sup>th</sup> or 10<sup>th</sup>). The landlord's Application for Dispute Resolution was served by registered mail but unclaimed after several notices were left. The landlord agreed he received the tenant's Application. I find the landlord's Application is deemed to be served and the other documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears and to recover the filing fee for this application?

Or is the tenant entitled to relief and to recover filing fees for the application?

### **Background and Evidence:**

Both parties and witnesses for the landlord attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on May 1, 2013 for a one year fixed term lease, that rent is \$1395 a month and a security deposit of \$700 was paid on April 28, 2013. It is undisputed that the tenant paid rent for May on May 15, 2013 and received a receipt "for use and occupancy only". The landlord requests an Order of Possession and a monetary order for rental loss for June. The tenant said they were awaiting the outcome of the hearing before paying June's rent; they are still in residence.

The female tenant gave evidence that she got the Notice to End Tenancy from the landlord's mother on May 9, 2013 but did not give it to her husband until the next day as he was not there; then she revised her statement by saying he was outside with the dog and he helped the mother or her witness up the steps. The mother gave sworn evidence that she served the Notice on Thursday May 9<sup>th</sup> with her friend as witness and her friend also testified that the mother handed the Notice to the female tenant with the words that this is an eviction notice and the female tenant then handed it to her husband and he looked at it.

Both parties agreed that the rent was to be paid by bank transfer but the tenant said their bank account got frozen because it was compromised. She said it took about a week to get it corrected. The landlord said he went to see them on the weekend after the Notice was served and they said, "We have 5 days"; the tenant confirmed that he came on the 11<sup>th</sup> May. The tenant said they had the money on May 14<sup>th</sup> but the landlord did not come to get it. The landlord then said he sent texts and emails as to why the rent was not paid and got no response; if they had said they had the cash, he stated he would have had his mother come to collect it. He pointed out that rent was supposed to be paid by bank transfer so they could have paid it anytime within the 5 days but did not.

The female tenant wanted more time to make more points so the time was extended. She wanted to emphasize that the bank freezing their account was beyond their control, they had spent a lot of money to move into the unit and were only in their first month of tenancy, they had the money on the 14<sup>th</sup> but no way of getting it to the landlord, the bank was closed by the time they had the rent money and they do not have lots of money unlike the landlords. Her husband came late into the hearing and after hearing him contributing in the background, I asked him to take the oath as he appeared to be giving or assisting in sworn testimony.

In evidence is the Notice to End Tenancy for unpaid rent, the one year lease, a proof of service signed by the mother and a receipt dated May 15, 2013 for a deposit which was acknowledged to be for “use and occupancy only”.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

**Order of Possession:**

I find the weight of the evidence is that the Notice to End Tenancy was served and received personally on May 9, 2013. Although the tenants had said on their Application that it was served on May 10, 2013, I do not find their evidence as credible as the landlord's as the female tenant in the hearing agreed that she did not know “100% for sure when it was served”; I also found her statements inconsistent as she said her husband did not get the Notice until the next day and then said he was present at the time. I found the evidence of the landlord's mother and her witness to be straightforward and credible so I find the Notice was served on May 9, 2013.

I find section 46(4) gives the tenant five days to pay the rent in full or file an Application for Dispute Resolution. I find the rent was paid in full on May 15<sup>th</sup>, 2013 but this was one day late and the tenant's Application was filed on May 17<sup>th</sup>, three days late. I find the landlord did not reinstate the tenancy as he limited the acceptance of the deposit to “use and occupancy only”. The tenancy is at an end. I find the landlord entitled to an Order of Possession pursuant to sections 46 and 55 of the Act.

Although the tenant contended strenuously that they had the rent and the landlord failed to pick it up, I find insufficient evidence to support her statements. Furthermore, I find the arrangement was that the rent was to be paid by bank transfer which puts no onus on the landlord to pick up the rent. The tenant made further points that the bank was closed “by the time they had the rent money” so the transfer could not be made; however, I find May 13<sup>th</sup> and 14<sup>th</sup> were on a Monday and Tuesday and banks are usually open then as well as the 15<sup>th</sup> when the transfer was finally made. The weight of the evidence is that they were not in funds until the 15<sup>th</sup> which is one day too late to prevent the tenancy ending according to section 46. Although the tenant described the unfortunate circumstance of having their accounts frozen, I find an individual's financial problems do not excuse them from the provisions of the Act to pay their rent on time and to within the time limits as set out in section 46 when Notice is served.

The tenant's application was to cancel the Notice to End Tenancy for their reasons as cited above. I dismiss the tenants' application without leave to reapply as I find they

were out of time to make the application and I find the landlord's evidence more credible and prefer it to the tenants' evidence for the reasons I outlined above.

**Monetary Order:**

It was undisputed that the tenants have not paid rent for June 2013 and are still in residence. I find the landlord entitled to rental loss for June 2013 in the amount of \$1395 and to retain the security deposit to offset this amount.

**Conclusion:**

I dismiss the application of the tenants in its entirety without leave to reapply and I find they are not entitled to recover filing fees for their application.

I find the landlord entitled to an Order of Possession and a monetary order as calculated below. I find the landlord entitled to retain the security deposit to offset the amount owing and to recover filing fees for this application.

**Calculation of Monetary Award:**

Rental loss for June 2013	1395.00
Filing fee for this application	50.00
Less security deposit	-700.00
Total Monetary Order to landlord	745.00

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 13, 2013

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Residential Tenancy Branch

